

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address</p> <p>Robert P. Goe – State Bar No. 137019 Brandon J. Iskander – State Bar No. 300916 <b>GOE FORSYTHE &amp; HODGES LLP</b> 17701 Cowan Avenue, Suite 210 Irvine, CA 92614 RGoe@goeforlaw.com Biskander@goeforlaw.com Telephone: (949) 798-2460 Facsimile: (949) 955-9437</p> <p><input type="checkbox"/> <i>Movant appearing without an attorney</i> <input checked="" type="checkbox"/> <i>Attorney for Movant</i></p>	<p>FOR COURT USE ONLY</p> <div data-bbox="1047 262 1432 535"><p><b>FILED &amp; ENTERED</b></p><p><b>JUL 31 2023</b></p><p>CLERK U.S. BANKRUPTCY COURT Central District of California BY mcall DEPUTY CLERK</p></div>
<p><b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</b></p>	
<p>In re:</p> <p>JAMIE LYNN GALLIAN,</p> <p>Debtor(s).</p>	<p>CASE NO.: 8:21-bk-11710-SC CHAPTER: 7</p> <p><b>ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)</b></p> <p>DATE: July 19, 2023 TIME: 10:00 a.m. COURTROOM: 5C PLACE: U.S. Bankruptcy Court 411 W. Fourth Street Santa Ana, CA 92701</p>
<p><b>MOVANT: The Huntington Beach Gables Homeowners Association</b></p>	

1. The Motion was: ☒ Opposed ☐ Unopposed ☐ Settled by stipulation

2. The Motion affects the following Nonbankruptcy Action:

Name of Nonbankruptcy Action: Randall L. Nickel v The Huntington Beach Gables HOA, et al.


Docket number: 30-2020-01163055-CU-OR-CJC

Nonbankruptcy court or agency where the Nonbankruptcy Action is pending: Superior Court of California - County of Orange - Central Justice Center

3. The Motion is granted under 11 U.S.C. § 362(d)(1).
4. As to Movant, its successors, transferees and assigns, the stay of 11 U.S.C. § 362(a) is:
- ☒ Terminated as to the Debtor and the Debtor's bankruptcy estate.
  - ☐ Modified or conditioned as set forth in Exhibit \_\_\_\_\_ to the Motion.
  - ☐ Annulled retroactively to the bankruptcy petition date. Any postpetition acts taken by Movant to enforce its remedies regarding the nonbankruptcy action do not constitute a violation of the stay.
5. **Limitations on Enforcement of Judgment:** Movant may proceed in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law. Movant is permitted to enforce its final judgment only by (*specify all that apply*):
- ☐ Collecting upon any available insurance in accordance with applicable nonbankruptcy law.
  - ☐ Proceeding against the Debtor as to property or earnings that are not property of this bankruptcy estate.
6. This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.
7. ☐ The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the Debtor.
8. ☒ The 14-day stay prescribed by FRBP 4001(a)(3) is waived.
9. ☐ This order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the nonbankruptcy action.
10. ☐ This order is binding and effective in any future bankruptcy case, no matter who the debtor may be, without further notice.
11. ☒ Other (*specify*): The Court's tentative ruling on the Motion was adopted as the final ruling and is attached.

###

Date: July 31, 2023

  
Scott C. Clarkson  
United States Bankruptcy Judge

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Scott Clarkson, Presiding  
Courtroom 5C Calendar**

**Wednesday, July 19, 2023**

**Hearing Room**

**5C**

10:00 AM

**8:21-11710 Jamie Lynn Gallian**

**Chapter 7**

**#2.00**

Hearing RE: Motion for relief from stay [Action In Non-Bankruptcy Forum]

Huntington Beach Gables Homeowners Association v. DEBTOR  
(Motion filed 6/28/2023)

**[RE: Case Name: Randall L. Nickel v. The Huntington Beach Gables HOA,  
et al.]**

**[Docket Number: 30-2020-01163055-CU-OR-CJC]**

**[Pending In: Superior Court Of California - County Of Orange - Central  
Justice Center]**

Docket 344

**Tentative Ruling:**

Tentative for 7/19/23 is to GRANT.

In evaluating whether cause exists to grant relief from stay, Courts in the Ninth Circuit have examined the factors set forth in *In re Curtis*. 40 B.R. 795, 799–800 (Bankr. D. Utah 1984). "While the *Curtis* factors are widely used to determine the existence of 'cause,' not all of the factors are relevant in every case, nor is a court required to give each factor equal weight." *In re Landmark Fence Co., Inc.*, 2011 WL 6826253 at \*4 (C.D. Cal. 2011). Those factors are:

- (1) Whether the relief will result in a partial or complete resolution of the issues;
- (2) The lack of any connection with or interference with the bankruptcy case;
- (3) Whether the foreign proceeding involves the debtor as a fiduciary;
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;

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- (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- (10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) The impact of the stay on the parties and the "balance of hurt."

*In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 559 (C.D. Cal. 2004).

The Court has engaged in an analysis of the *Curtis* factors and is inclined to find that they weigh in favor of granting relief from stay.

Debtor, *inter alia*, argues that Movant lacks standing and points to an order denying Movant's prior motion for relief "without prejudice to refiling the motion if the cause of action voidable transfer is abandoned or deemed abandoned by the chapter 7 trustee." Debtor further argues that Movant has not established "cause" and that granting relief would impact her fresh start.

The foregoing arguments are not persuasive. The voidable transfer action was abandoned by an order entered 9/23/22 [Dk. 239] and Trustee filed a non-opposition to this motion. Moreover, Debtor's discharge was denied and thus, there is no stay as to Debtor. See, § 362 (c)(2)(C). Finally, in Movant's well-taken Reply, Movant addresses each of the *Curtis* factors, demonstrating that relief is warranted: relief will result in a complete resolution in State Court, the issues involve state law issues, do not impact the bankruptcy case as the estate has no interest in the matter, and the Superior Court has requested confirmation regarding the applicability of the stay.

Virtual appearances are required. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities. The parties, including counsels, their clients, and pro se individuals, may virtually join the hearing. No testimony, however,

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will be permitted unless specifically authorized by the Court either prior to, or during, the hearing. Parties virtually appearing should consult the NOTICE OF VIDEO AND TELEPHONIC APPEARANCE PROCEDURES FOR JUDGE SCOTT CLARKSON'S CASES for specific procedures and further information.

The audio portion of each hearing will be recorded electronically by the Court and constitute its official record. By Order of the Judicial Conference of the United States, members of the general public may only view the hearings from the Courtroom, which will remain open. This is a nation-wide mandate and is not subject to this Court's discretion. The Court will have monitors on and viewable within the Courtroom for viewing.

Hearing participants may connect to the videoconference through an Internet browser by entering the Videoconference URL shown below, as well as the meeting ID and password, when prompted.

Videoconference URL: <https://cacb.zoomgov.com/j/1601208223>

Meeting ID: 160 120 8223

Password: 773987

If a participant is unable to send and receive audio through his/her computer, or join the videoconference through an Internet browser for any reason, the audio of the hearing may be accessed by telephone using the following audio conference information:

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 120 8223

Password: 773987

For further details, please consult the instructions on the Court's website <https://www.cacb.uscourts.gov/judges/honorable-scott-c-clarkson>.

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Please note that default matters may be called prior to the videoconference, so there may be a slight delay to the official start time of the videoconference hearing.

As noted in the Court's Zoom Video Hearing Guide, located at <https://www.cacb.uscourts.gov/node/7890>, all persons are strictly prohibited from making any recording of court proceedings, whether by video, audio, "screenshot," or otherwise. Violation of this prohibition may result in the imposition of monetary and non-monetary sanctions.

<b>Party Information</b>
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**Debtor(s):**

Jamie Lynn Gallian

Pro Se

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Aaron E. DE Leest  
Eric P Israel